

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INACOM CORPORATION, on behalf
of all affiliated debtors,

Case Nos.: 04-cv-00148 (GMS)
04-cv-00579 (GMS)

Plaintiff,

vs.

TECH DATA CORPORATION,

Defendant.

TECH DATA CORPORATION,

Third-Party Plaintiff,

vs.

COMPAQ COMPUTER CORP.
and CUSTOM EDGE, INC.,

Third-Party Defendants.

MOTION TO CONSOLIDATE RELATED CIVIL ACTIONS

TECH DATA CORPORATION, the defendant and third party plaintiff herein (“Tech Data”), as and for its Motion to Consolidate Related Civil Actions, respectfully states as follows:

On March 9, 2004 the Clerk of Court created the captioned matter as a civil case bearing case number 04-00148 (GMS) in relation to the docketing of the withdrawal record for Tech Data’s motion to withdraw the reference from the United States Bankruptcy Court. A true and correct copy of the docket report for this case number 04-00148 (GMS), dated March 15, 2005, is annexed hereto and made a part hereof as Exhibit “A.”

Thereafter, on June 25, 2004, the Clerk of Court created a second civil case bearing case number 04-00579 (GMS). A true and correct copy of the docket report for this case number 04-00579 (GMS), dated March 15, 2005, is annexed hereto and made a part hereof as Exhibit "B."

Because there were separate two civil cases for the same cause of action open, certain pleadings were filed in either 04-00148 or 04-00579 such that neither action contains a complete record of all docket activity. And while the Clerk of Court made a notation on the docket that the matter bearing case number 04-00579 had been opened in error and would be closed, pleadings have continued to be accepted for filing in that errant action. Most recently, a Notice of Service of certain discovery requests was made by the third party defendant to Tech Data.¹

Tech Data therefore respectfully requests that the Court enter an Order consolidating case numbers 04-00148 and 04-00579. Granting the instant Motion would ensure that the procedural and substantive rights of all parties are maintained by "merging" the two disparate dockets into one court record, and would also avoid unnecessary judicial labor such as would be attendant with the re-filing of pleadings and motions from 04-00579 in 04-00148.

Tech Data respectfully submits that no novel issue of fact or law is presented by this action, which seeks ministerial relief. As such, Tech Data does not believe that either the plaintiff or the third party plaintiff will oppose the relief sought herein. Accordingly, Tech Data respectfully requests that the Court dispense with the requirements of Rule 7.1.2 of the Local Rules of Civil Practice and Procedure of this Court (the "Local Rules") as to the filing of a separate Memorandum of Law.

A proposed form of Order granting this Motion is being submitted contemporaneously herewith.

¹ The docket for 04-00579 (GMS) incorrectly refers to this filing event, court paper number 7, as having been made by Tech Data.

WHEREFORE, Tech Data Corporation respectfully requests that this Court enter an Order granting the within Motion and consolidating the dockets for case numbers 04-00148 (GMS) and 04-00579 (GMS). To the extent that the Court determines that this Motion should be referred to the Clerk of Court for disposition consistent with Rule 77(c) of the Federal Rules of Civil Procedure and Local Rule 77.2(a)(5), Tech Data respectfully requests that the Clerk of Court enter an Order granting the relief requested in the Motion.

Dated: April 14, 2005.

Respectfully submitted,

HERLIHY, HARKER & KAVANAUGH

By: /s/ James F. Harker

James F. Harker (Bar No. 255)
Local Counsel for Defendant
1300 North Market Street, Suite 400
Wilmington, Delaware 19899
Telephone: (302) 654-3111

and

ADORNO & YOSS, LLP
Charles M. Tatelbaum
Florida Bar No.: 177540
Stephen C. Hunt
Florida Bar No.: 191582
350 E. Las Olas Boulevard, Suite 1700
Fort Lauderdale, FL 33301
Telephone: (954) 763-1200
Facsimile: (954) 766-7800

Attorneys for Defendant and Third Party Plaintiff,
Tech Data Corporation

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2005 I caused a true and accurate copy of the foregoing Motion and a proposed form of Order to be served upon the following parties in the manner indicated:

<u>By Hand Delivery</u> William H. Sudell, Jr. Derek C. Abbott Morris, Nichols, Arsht & Tunnell 1201 N. Market Street Wilmington, DE 19899-1347 <i>Attorneys for Third Party Defendant</i>	<u>By Hand Delivery</u> Laura Davis Jones Sandra McLamb Kathleen Marshall DePhillips Pachulski, Stang, Ziehl, Young & Jones, PC 919 North Market Street, Suite 1600 Wilmington DE 19899 <i>Attorney for Plaintiff</i>
<u>By First Class Mail</u> Cecily A. Dumas Ellen A. Friedman Brandon Chaves Friedman Dumas & Springwater LLP One Maritime Plaza, Suite 2475 San Francisco, CA 94111 <i>Attorneys for Third Party Defendant</i>	<u>By First Class Mail</u> Andrew W. Caine Jeffrey P. Nolan Pachulski, Stang, Ziehl, Young & Jones, PC 10100 Santa Monica Blvd., 11 th Floor Los Angeles, CA 90067 <i>Attorneys for Plaintiff</i>

Dated: April 14, 2005.

/s/ James F. Harker
James F. Harker (No. 255)